

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Glen Heaton, MD (CONTRACTOR)** enter into this Contract (**#06-046-MSP**). The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Montana State Prison (MSP)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

***Glen Heaton, MD
4143 E. Lake Dr.***

***Butte, Montana 59701
(406) 491-3792***

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

On an as-needed basis, CONTRACTOR agrees to provide DEPARTMENT with the following services:

- A. “On-call” physician coverage to the Montana State Prison Infirmary, as generally outlined herein:
 - i. During on-call status, CONTRACTOR shall be available to MSP Infirmary nursing staff and Physician Assistants (PA’s) [by telephone] to make medical judgments regarding an inmates’ medical care. Should the inmate require a physician evaluation, CONTRACTOR will either coordinate the inmate’s case with one of the PA’s or require the inmates’ transport to the appropriate emergency room.
- B. “On-site” physician services as mutually agreed upon in order to complete scheduled appointments, as well as other duties that shall include, but not be limited to: sick call, chronic care visits, physician requested follow-up, and rounds to inmates on inpatient status at the MSP infirmary.
 - i. CONTRACTOR shall maintain records of all dates and times spent providing on-site and on-call coverage. Said records must be submitted with CONTRACTOR'S invoice.
- C. Serve as an alternative member of the Medical Advisory Panel (“Panel”) and participate through telephone conferences as requested by the DEPARTMENT Medical Director.
 - i. Members shall examine and evaluate specific cases submitted to the Panel and recommend whether or not outside medical procedure is necessary pursuant to DOC Policy 4.5.10 – Level of Therapeutic Care.
 - ii. DEPARTMENT will provide CONTRACTOR with copies of the inmate’s medical case records in advance of each Panel teleconference.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services provided pursuant to Section 2 in the following manner:

- A. CONTRACTOR will be compensated \$50.00 (fifty and 00/100 dollars) for each twelve-hour shift of “on-call” coverage provided, which includes receipt of and response to all phone calls received during the shift. Compensation will be paid on a prorated basis for shifts less than 12 hours in duration.
- B. Clinical, on-site physician coverage at MSP will be compensated at the rate of \$100.00 (one hundred and 00/100 dollars) per hour. CONTRACTOR’S billing shall be reflected in 15-minute hourly increments as defined in Section 2 herein.
- C. CONTRACTOR will be compensated \$100.00 (one hundred and 00/100 dollars) per hour for each billable hour served on the Medical Advisory Panel.
- D. DEPARTMENT agrees to pay CONTRACTOR within 10 days following receipt of a correct invoice.
- E. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- F. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison does not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on August 31, 2006, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed at one (1) year intervals for a period not to exceed a total of five (5) additional years.

Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed

6. LIAISONS AND NOTICE

- A. Cathy Redfern (846-1320 ext. 2448), 500 Conley Lake Road, Deer Lodge MT 59722 or successor serves as DEPARTMENT liaison.
- B. Glen Heaton, MD (406-491-3792), 4143 E. Lake Drive, Butte Montana 59701 or successor serves as CONTRACTOR’S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal

Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the joint property of CONTRACTOR and DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractor is required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither CONTRACTOR nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period. A renewal document must be sent to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301, upon expiration.

9. HOLD HARMLESS AND INDEMNIFICATION

The state hereby agrees to protect, defend, and save CONTRACTOR harmless from and against claims that arise in performance of her administrative duties for and in behalf of the DEPARTMENT, including medical reviews, medical advice, and medical recommendations, provided that they are performed:

- 1) In accordance with §2-9-108, MCA, whereby the state's limitation on governmental liability for damages in tort as a result of an act or omission of an officer, agent, or employee of the state may not exceed \$750,000 for each claim and \$1.5 million for each occurrence.
- 2) In accordance with §2-9-305, MCA, whereby the state may be liable for torts of its employees or agents as long as they are acting within the scope of their employment or duties as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

10. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

11. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

12. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

13. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

14. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

15. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

16. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

17. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

18. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

19. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

20. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

21. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

CONTRACTOR

Mike Mahoney, Warden
Montana State Prison

Glen Heaton, M.D.

Date

Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

(Date)

CONTRACT AMENDMENT
CONTRACT #06-046-MSP

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Glen Heaton, M.D.** (CONTRACTOR) 4143 E. Lake Dr., Butte, Montana 59701 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of December 23, 2006 and Section 19 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on August 31, 2006 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows (**new language underlined, old language interlined**):

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on August 31, ~~2006~~ 2007, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed at one (1) year intervals for a period not to exceed a total of ~~five (5)~~ four (4) additional years.

Upon expiration of this Contract, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed

This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

DEPARTMENT

Mike Mahoney, Warden
Montana State Prison

Date

CONTRACTOR

Glen Heaton, M.D.

Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

Date